

REMARKS

Claims 33-52 are now pending in the application. Claims 1-32 have been previously cancelled and claims 33-44 have been previously withdrawn from consideration. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claim 51 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner believed the word "helpful" makes the claim indefinite. In response thereto this word has been removed from claim 51. Reconsideration is therefore respectfully requested.

REJECTION UNDER 35 U.S.C. § 101

Claims 45-52 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Merely in the interest of expediting prosecution, minor amendments have been made to claims 45 and 52 that make clear that a computer system and a computer readable medium are involved in the claimed methods. It is believed that these amendments remove this ground for rejection, and reconsideration and withdrawal of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 45-48 and 50-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Slivka (U.S. Pat. Pub. No. US 2003/0225600 A1) in view of Yu (U.S. Pat. No. 6,314,361) in further view of Official Notice. This rejection is respectfully traversed.

The Examiner is respectfully requested to reconsider this rejection in view of the following remarks. The second paragraph in the body of claim 45 reads as follows:

using the integration engine and the scheduling information to generate a disruption specification based upon an event, the disruption specification including data identifying passengers and crew members needing to be rescheduled from travel on an initial mobile platform, and penalty cost information relating to available actions that may be taken to recover from the disruption and to rebook passengers on an alternative itinerary;

A careful review of Slivka fails to reveal any discussion, or even suggestion, that Slivka involves generating a disruption specification that includes “*data identifying passengers and crew members*” needing to be rescheduled. Slivka also does not disclose or suggest providing “penalty cost” information in its disruption specification. Slivka is concerned simply with rebooking paying passengers on other aircraft in a manner that places high priority on the fare class of each passenger. There is simply no discussion whatsoever that Slivka is considering “crew members” in its rescheduling operations. All of the specifics on how passengers are re-booked involve looking at either fare amounts that the disrupted passengers have paid, first class fare status or other various factors (see, e.g., TABLE 3 in paragraph 0026) in an effort to assign each paying passenger a PNR value that is weighed in re-booking the passenger. Every single consideration for re-booking is geared to paying passengers.

Slivka furthermore does not discuss or suggest considering “penalty cost” information in constructing its disruption specification. That is likely because Slivka is simply concerned with re-booking passengers on other existing flights in a manner that minimizes the travel inconvenience to the paying passenger. Again, there is absolutely no discussion in Slivka of considering penalty cost information in its re-booking operations.

Yu et al., on the other hand, has absolutely nothing to do with determining how a given group of *passengers* on a given aircraft is to be rescheduled. Yu et al. appears strictly concerned with addressing aircraft reassignments, flight modifications to cover the disruption, and checking if the flight solutions determined by the aircraft optimization engine 1 are “efficiently supported by flight and service crews”. Yu et al. simply does not address or suggest considering paying passengers in its “optimal solutions”, let alone how determinations may be made that one or more subgroups of passengers are acceptably rescheduled or unacceptably rescheduled.

The Examiner is also encouraged to re-review claim 52, which has been amended to more positively recite that ***each of the crew engine, the fleet engine, the passenger engine and the integration engine*** are being used to determine potential rescheduling solutions. For the Examiner’s convenience a portion of claim 52 is presented below.

simultaneously in parallel, using ~~at least two of:~~
a fleet engine to obtain information from the integration engine regarding the disruption specification, and to generate information relating to alternative mobile platforms that are available for use in connection with a new itinerary;
a crew engine to obtain information from the integration engine regarding the disruption specification, and generate information relating to constraints for crew members scheduled to travel on the initial mobile platform; and
a passenger engine to generate information relating to constraints affecting passengers scheduled for travel on the initial mobile platform; and
using the integration engine to obtain the information generated by ~~one or more of~~ the fleet engine, the crew engine and the passenger engine, and to use the obtained information to determine potential rescheduling solutions for both the passengers and the crew members;
and

For at least these reasons, reconsideration and withdrawal of the rejection of the foregoing claims in view of Slivka/Yu et al. is respectfully requested.

Claim 49 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Slivka in view of Yu in further view of Official Notice. In view of the remarks above concerning independent claim 45, it is believed that this rejection has been rendered moot.

References Have Been Combined in Hindsight

The Examiner will appreciate that it is well established by the CAFC that there must be some teaching, motivation or desirability to combine the prior art references. See e.g., C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352 (Fed. Cir. 1998). A general relationship between the fields of the prior art references is not sufficient to establish the required "suggestion" or "motivation". Interactive Techs., Inc. v. Pittway

Corp., Civ. App. No. 98-1464, slip op. at 13 (Fed. Cir. June 1, 1999) (unpublished), cert. denied, 528 U.S. 1046 (1999).

Furthermore, the Federal Circuit has stated:

The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some "teaching, suggestion or reason" to combine the cited references.

McGinley v. Franklin Sports Inc., 262 F.3d 1339, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) (citing Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579, 42 USPQ 2d 1378, 1383 (Fed. Cir. 1997)).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). In In re Fritch, the CAFC stated:

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosure disclosures in the prior art to deprecate the claimed invention.

Id. at 23 USPQ2d 1784.

In this example, the Examiner has failed to explain the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of the presently claimed invention to make the combination asserted by the Examiner. Specifically, the Examiner has not shown why one of ordinary skill in this art who was examining the Slivka patent would have been motivated or "clued in" to combining its teachings with those of Yu et al. Slivka is not concerned at all with restrictions imposed on crew members, only re-booking passengers accordingly the

value of their fare or their fare status (e.g., first class). Slivka is simply looking at what other flights are available and re-booking paying passengers on those different flights in a manner that adheres to the PNR values assigned to each passenger (e.g., first class, handicapped, etc.). Put differently, one examining the Slivka patent simply would have had no motivation to take into account restrictions on crew members or penalty cost considerations when performing the passenger re-booking. For at least these reasons, it is respectfully submitted that these two references have been combined in hindsight.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: June 2, 2010

By: Mark D. Elchuk
Mark D. Elchuk, Reg. No. 33,686

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600
MDE/al/chs
15483885.1